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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,903	10/15/2001	Jason Lee Crouse	18617-0001	9491
29052	7590	06/24/2004	EXAMINER	
SUTHERLAND ASBILL & BRENNAN LLP 999 PEACHTREE STREET, N.E. ATLANTA, GA 30309				WONG, STEVEN B
ART UNIT		PAPER NUMBER		
		3711		

DATE MAILED: 06/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/890,903	CROUSE, JASON LEE
	Examiner	Art Unit
	Steven Wong	3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 12 April 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 5 and 8-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 5 and 8-12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit: 3711

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claims Rejections – 35 USC 103***

2. Claims 5 and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over St. John in view of Fariest. Regarding claim 5, St. John reveals a golf tee (note Figures 2 and 3) comprising a base 913 and a plurality of bristles (26c) that form an annular support surface for a golf ball. Note Page 6, line 26 through page 7, line 3 teaching a bristle height of 40mm. St. John also states that this height may be varied. It would have been obvious to one of ordinary skill in the art to form the bristles of St. John to the instantly disclosed height in order to allow the golfer to tee the golf ball at a particular height. Note also Figure 2 showing the bristles in a vertical orientation when supporting the golf ball. Further, note page 4, lines 15-23 of St. John stating that various arrangements for the bristles are envisaged. St. John suggests a circle arrangement for the bristles.

Fariest discloses a golf tee comprising a base having a pointed end and a plurality of bristles extending from the opposite end for supporting a golf ball. The bristles are arranged in an annular support surface for supporting the golf ball. It would have been obvious to one of ordinary skill in the art to form the bristles of St. John in a circular arrangement with a radius as instantly defined in order to properly support the golf ball.

Regarding claim 8, both St. John and Fariest shows the bristles in a cluster. It would have been obvious to one of ordinary skill in the art to form the cluster with 10 to 25 bristles in order to properly support the golf ball.

Regarding claim 9, note page 7, lines 24-26 of St. John stating that the bristles are preferably formed of plastic. It would have been obvious to one of ordinary skill in the art to form the bristles from nylon with a thickness of 0.4 mm in order to properly support the golf ball and take advantage of that material's well known physical characteristics.

Regarding claims 10-12, note Figures 2 and 3 showing a circular shape for the upper face of the base (13). Note page 6, lines 26 and 27 teaching a diameter of 20 mm. It would have been obvious to one of ordinary skill in the art to form the base with a diameter of 18 mm as the applicant has not shown the criticality for the claimed dimension and it appears that the dimension taught by St. John would accomplish similar purposes.

#### *Response to Arguments*

3. Applicant's arguments have been fully considered but are not deemed to persuasive. Regarding the applicant's argument that the bristles of St. John do not form an annular support surface, attention is directed to page 4, lines 15-22 of St. John suggesting that the bristles may be formed "in a circle or in several concentric circles." Further, attention is directed to Figures 1 and 2 of Fariest showing a golf tee with bristles arranged in a circle.

Regarding the applicant's argument that the bristles of St. John width and diameter of the bristles of St. John would not provide a suitable support surface under windy conditions, the rejection of claim 5 recites that the particular height and radius is considered to be obvious given the teachings of St. John and Fariest. Lacking a showing of criticality for the recited heights by a new and unexpected result, they are considered to be obvious given the teachings of St. John and Fariest. The applicant states that the recited annular diameter is optimum so that a golf ball will not blow off the tee during windy conditions. However, this statement is merely subjective and

not supported by any factual evidence whatsoever. The applicant should supply test results comparing the recited height with that of the prior art and other dimensions outside the recited range in order to demonstrate the new and unexpected results.

Regarding the limitation "vertical orientation", attention is directed to Figure 2 St. John showing the bristles in an orientation that satisfies applicant's particular definition.

***Conclusion***

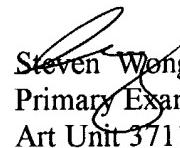
4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Wong whose telephone number is 703-308-3135. The examiner can normally be reached on Monday through Friday 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steven Wong  
Primary Examiner  
Art Unit 3711

SBW  
June 22, 2004